

REMARKS

Claims 1, 3 to 9, 11 to 34, 36 to 42 and 44 to 64 remain pending in the application, of which Claims 1, 6, 9, 14, 17 to 19, 26, 34, 39, 42, 47, 50 and 57 are independent. Reconsideration and further examination are respectfully requested.

Claims 1, 3 to 9, 11 to 34, 36 to 42 and 44 to 64 were rejected under 35 U.S.C. § 102(e) over U.S. Publication No. 2003/0128861 (Rhoads). The rejections are respectfully traversed.

The basis for the rejection is that the subject matter of Rhoads which is relied upon for the rejections is not believed to be prior art to the subject application. In this regard, the Office Action relied upon Claims 37 to 100 of Rhoads as allegedly anticipating the present invention. However, it is believed that Claims 37 to 100 are new matter to the application for which the cited U.S. publication of Rhoads is based (Application No. 10/274,290, hereinafter the “‘290 application”) and therefore, the subject matter of those claims has an effective filing date after the filing date of the subject application. Accordingly, the subject matter of Claims 37 to 100 is not prior art to the subject application.

In more detail, the ‘290 Application for Rhoads was filed on October 18, 2002, which is exactly one-year after the present application was published under 35 U.S.C. § 122(b) as U.S. Publication No. 2001/0032186 (the “‘186 publication”). While Rhoads claims domestic priority under 35 U.S.C. § 120 to numerous other applications (some of which predate the subject application), it also claims to be a Continuation-In-Part (CIP) of numerous applications. By definition, a CIP application includes new matter,

which, for the '290 Application, is believed to constitute at least Claims 37 to 100 for at least the following reasons.

Claims 37 to 100 of Rhoads appear to have been copied exactly from Claims 1 to 64 of Applicant's '186 publication. As such, it appears that the Applicant of Rhoads may have simply filed the '290 Application by adding Claims 37 to 100 merely to preserve a possible interference claim under 35 U.S.C. § 135(b)(2). However, upon a careful review of the disclosure of Rhoads (i.e., the supporting disclosure to comply with 35 U.S.C. § 112), Applicant fails to see any description whatsoever that provides the required support under § 112 for Claims 37 to 100. Therefore, since Claims 37 to 100 are not supported in the written description, it is believed that they constitute at least part of the new matter which makes the '290 application a CIP. As such, it is believed that the subject matter disclosed by Claims 37 to 100 of Rhoads have an effective filing date of October 18, 2002 and therefore, do not constitute prior art to the subject application. Accordingly, the rejections are traversed on this basis.

Moreover, the Office Action did not indicate what the effective filing date is of the subject matter relied upon for the rejections, or which of the claimed priority applications (if any) are relied upon to support the effective date. Therefore, Applicant requests that, if the rejections are maintained, that the Examiner provide a specific application or patent number and its effective filing date that fully supports the subject matter of Claims 37 to 100 of Rhoads.

In view of the foregoing, withdrawal of the rejections is respectfully requested.

No other matters having been raised, the entire application is believed to be in condition for allowance and such action is respectfully requested at the Examiner's earliest convenience.

Applicant's undersigned attorney may be reached in our Costa Mesa, California office at (714) 540-8700. All correspondence should continue to be directed to our below-listed address.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Ed Kmett", is written over a horizontal line.

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